

**COX, WOOTTON, GRIFFIN,  
HANSEN & POULOS LLP**  
Gregory W. Poulos (SBN 131428)  
Max L. Kelley (SBN 205943)  
190 The Embarcadero  
San Francisco, CA 94105  
Telephone No.: 415-438-4600  
Facsimile No.: 415-438-4601

**LAW OFFICES OF RICHARD P. WAGNER**  
Richard P. Wagner (SBN 166792)  
700 OceanGate, Suite 700  
Long Beach, CA 90802  
Telephone: (562) 216-2946  
Facsimile: (562) 216-2960

Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8- foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**PLAINTIFF DEL MAR SEAFOODS,  
INC.'S TRIAL BRIEF**

Final Pretrial Conf.: May 5, 2008  
Time: 2:00 p.m.

Trial Date: May 14, 2008  
Time: 7:30 a.m.  
Courtroom 9, 19<sup>th</sup> Floor  
Hon. William H. Alsup

Pursuant to the Court's Guidelines for Trial and Final Pretrial Conference in Civil

Bench Trials before the Honorable William Alsup, pg. 2, ¶ 2(e), Plaintiff Del Mar Seafoods,  
Inc. submits this Trial Brief.

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP  
190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

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1     **I. INTRODUCTION**

2           This lawsuit is the culmination of efforts by a reputable fishing company to recover  
3     on loans that it has made to the defendants Barry and Chris Cohen and their two sons over  
4     the course of several years. There are some disputes over which of these loans are subject to  
5     a promissory note and preferred ship mortgage, and there are issues about how certain  
6     payments have been or should be applied. But the Cohens have not disputed that they or  
7     their sons actually received the money from Del Mar and still owe, by their own admission in  
8     this case, at least \$27,000 and by their earlier admission at least \$130,000.

9           The Cohens have also asserted a cross-complaint by which they seek to recover for  
10    lost income that they allege would have been earned during the roughly two months that the  
11    vessel was under arrest (from June 8, 2007 to August 17, 2007). Styled variously as causes  
12    of action for wrongful arrest or negligent or tortious interference with prospective economic  
13    advantage (PEA) the recovery sought is the same. In order to prevail on the cause of action  
14    for wrongful arrest, the Cohens must prove that Del Mar's decision to arrest the vessel was  
15    motivated by bad faith or malice or was taken with "gross-negligence." The evidence will  
16    show that Del Mar had good faith concerns about the Cohen's ability to pay the large amount  
17    of debt that they had incurred, and also that the Cohens had missed monthly payment  
18    obligations that they undertook to make both in the promissory note and in correspondence  
19    months before the arrest. On the causes of action for interference with PEA, the Cohens  
20    cannot meet their burden of proof that the actions of Del Mar were taken with the *intent* to  
21    interfere or even with the knowledge that interference would likely result. Of course, if Del  
22    Mar was correct, and the Cohens were in breach of the promissory note and mortgage, then  
23    Del Mar's arrest of the vessel was the exercise of a legal and contractual right that cannot be  
24    the basis for an award of damages under any cause of action arising from the arrest.

25    **II. STATEMENT OF FACTS TO BE PROVEN AT TRIAL**

26    **1. The Parties**

27           Del Mar Seafoods, Inc. is a fish buyer/processor on the West Coast. In the  
28    commercial fishing industry it is common practice for companies like Del Mar to loan money

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94109  
TEL 415-438-1600  
FAX 415-438-4601

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1 to fishermen as “advances” to pay for the cost of fuel, ice, maintenance and repairs and other  
 2 necessities used by the fishermen and to keep those accounts on a running balance offset by  
 3 the value of the catch. These loans are often secured by a preferred mortgage against the  
 4 vessel.

5 Barry Cohen has been involved in commercial fishing in California for the past 40  
 6 years, and for the past 10 years has been doing business with Del Mar. Barry Cohen is a  
 7 sophisticated businessman with multiple companies and joint ventures and more than thirty  
 8 years of business experience. Over the past thirty years he has started three California  
 9 corporations and been part of four joint ventures. He is also a sophisticated litigant, having  
 10 been involved in numerous lawsuits with, literally, millions of dollars in legal fees. He is  
 11 currently suing his former attorneys for legal malpractice arising from his multi-year  
 12 litigation against the Port San Luis Harbor District. From 2004 to 2006 he was employed by  
 13 Del Mar

14 Barry Cohen’s wife, Chris Cohen is also a defendant in this action as she was also a  
 15 signatory on the Note and Mortgage and a partner in the F/V POINT LOMA Fishing  
 16 Company. Chris Cohen was also once an employee of Del Mar Seafoods.

17 The F/V POINT LOMA is a 126-ton fishing vessel with a LOA of 70.8 feet. The  
 18 vessel is now owned by the “Claimant” to the vessel, the F/V POINT LOMA FISHING  
 19 COMPANY, INC., a company set up by Barry and Chris Cohen to hold the fishing vessel.  
 20 The vessel is believed to be fishing out of San Francisco Bay participating primarily in the  
 21 groundfish fishery in the US EEZ. Although the Court vacated the order for arrest, the vessel  
 22 is still a party to this action and is subject to the Court’s jurisdiction by admission of Barry  
 23 Cohen and representation of his counsel. If Del Mar prevails on its claims against the  
 24 Cohens and the vessel, the vessel itself, *in rem*, may be sold to pay for the value of any  
 25 judgment.

## 26 **2. Background on the Promissory Note and Mortgage**

27 In 1999, Del Mar and Cohen formed the Avila Beach joint venture (“JV”) for the  
 28 purpose of buying, processing, and selling fish from a site that Cohen had leased in Port San

COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS LLP

190 THE EMBARCADERO  
 SAN FRANCISCO, CA  
 94103  
 TEL 415-438-4600  
 FAX 415-438-4601

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1 Luis in Avila Beach, California. During the course of the JV, between 1999 and 2003, Del  
 2 Mar advanced Cohen money for a variety of purposes, including improvements to the F/V  
 3 POINT LOMA to prepare it for fishing in Mexico in anticipation of a joint venture between  
 4 Cohen and Del Mar, personal loans to Barry Cohen, and other "fishing loans." Del Mar never  
 5 obtained a promissory note or security for those debts. In 2003, as the sums grew, the  
 6 Cohens agreed to collateralize the loans with a promissory note and preferred ship mortgage  
 7 on the F/V POINT LOMA and its appurtenances. Copies of the Note and Mortgage are  
 8 stipulated for admission as Trial Exhibits (TE) 7 and 8 respectively.

9 When the loan was first documented, the principal balance was \$215,000. Del Mar  
 10 will present evidence that this was a low estimate or guess of what Cohen owed Del Mar at  
 11 the inception of the Note and Mortgage. The principal balance was expected to change,  
 12 however, as additional sums were loaned or added to the balance by agreement. The  
 13 Mortgage therefore provides:

14 **FUTURE ADVANCES.** This mortgage is executed for the purpose of  
 15 securing not only the payment of the above described note but also *to secure*  
 16 *all future advances made by the holder of said note to the mortgagor*; and  
 said mortgage shall remain in full force and effect *to secure all future*  
*advances* and all renewals or extensions of the above described note.

17 Mortgage, TE 8, Art. IX. (emphasis added)

18 Several additional debts were added to the original principal over time. These  
 19 included advances made directly to the Cohens (\$33,056.69), loans made by Del Mar to the  
 20 Cohen's son Michael (\$13,920.00), their son Leonard dba Olde Port Inn (\$18,069.10) and for  
 21 inventory (\$10,383.24). These additional amounts caused the principal balance to increase to  
 22 \$290,429.43. The addition of each of these items to the promissory note was specifically  
 23 agreed to by Barry Cohen who instructed Del Mar to add them to his "balance." Each of his  
 24 sons has admitted in their depositions in this case that Barry Cohen told them that he had  
 25 taken responsibility for paying off their debts to Del Mar.

26 The note required monthly payments of the greater of \$3,000.00 or 15% of the gross  
 27 landing receipts for each and every landing of seafood product made by the F/V POINT  
 28 LOMA. TE 7, page 1, first paragraph.

COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS LLP

190 THE EMBARCADERO  
 SAN FRANCISCO, CA  
 94105  
 TEL 415-438-1600  
 FAX 415-438-4601

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### 3. Payments on the Note: The Default

Since its inception, the Cohens have made only five payments on the note totaling \$188,000. These payments were made as follows:

- December 22, 2004: \$5,000
- November 10, 2005: \$175,000
- January 30, 2007: \$2,000
- February 15, 2007: \$3,000
- April 23, 2007: \$3,000

Total: \$188,000.

With this admitted history of payments, the Cohens have further admitted that they owe at least an additional \$27,000 on the note and mortgage and that they have not made any payments since April, 2007. They are therefore in default unless there has been some oral modification of the promissory note and mortgage relieving them of their monthly payment obligations.

In its order granting in part and denying in part Del Mar's motion for partial summary judgment, the Court noted that much of this case turns on the treatment given by the parties to the \$175,000 payment. Del Mar contends that the payment was made to pay down principal while the Cohens are contending that the payment was to apply to future monthly payment obligations such that no payment was due until February, 2009. If Del Mar is correct, then the defendants should be found to be in default and the total amount due under the note and mortgage is due and payable. Del Mar believes that the evidence at trial will be clear and convincing that there was never an agreement to apply the \$175,000 toward future monthly payments.

The evidence on this point is well set forth in the trial court's order on the recent Summary Judgment motion and therefore will not be re-addressed in detail here. From Del Mar's perspective, the most relevant testimony is Barry Cohen's admission during his deposition that the \$175,000 payment was specifically made to "pay down that note that much." Barry Cohen testified that when he personally delivered the \$175,000 check to Joe

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94103  
TEL 415-388-4600  
FAX 415-388-4601

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1 Cappuccio on or around November 10, 2005 the following exchange took place:

2 A. I gave it [the check] to Joe Cappuccio. He looked at it and said  
3 – I said, “Here’s the check that I said I would give.” He said,  
4 “Thank you very much.” And I said, “I’ll pay you the rest as  
5 soon as I can.” And he said, “Well, I’m not worried about”  
6 “I’m not concerned” or “not worried about it; it’s such a small  
7 amount now.”

8 Barry testified at his deposition that this was “the whole conversation.” The Court will note  
9 that there is no reference in this “whole conversation” to having the payment applied against  
10 future monthly payment obligations.

11 In December, 2006 after Del Mar had received no further payments from the Cohens  
12 for more than a year, Joe Roggio called Barry Cohen on his cell phone to discuss his making  
13 further monthly payments on the Note. Barry didn’t answer, so Roggio left him a voicemail  
14 message. On January 30, 2007 (a little more than a month after that phone call), Barry Cohen  
15 made a payment of \$2,000. (TE 34.). The payment on January 30, 2007 was sent together  
16 with a note from Barry Cohen reading:

17 Joe,  
18 Please credit my account. With this payment, if your analysis  
19 was correct, the new balance should be \$139,749.79.  
20 I will try to send you at least \$2,000/month, sometimes \$3,000.  
21 I’m sick right now and if I try to talk I start coughing, so  
22 instead, you get this note.  
23 I’m still unemployed, but this gives me a chance to help  
24 Michael make Olde Port better.  
25 I hope things are going good for you and your family. Please  
26 give Yvonne my regards. Too bad our families never got the  
27 chance to become better friends. Oh, well things usually  
28 happen for a reason. Well, take care of yourself.  
Barry

(TE 40).

29 The Court’s recent order on the motion for partial summary judgment properly  
30 concludes that this note is inconsistent with the Cohen’s entire theory of the case. This note,  
31 and the fact of payments made by Barry Cohen in February and April, 2007 are strong  
32 evidence that there was no oral agreement reached relieving Barry Cohen of the obligation to  
33 make monthly payments until February 2009 and that the \$175,000 payment was made to  
34 “pay down that note that much” and not to act as a pre-payment.



Based on the evidence to be presented at trial, the Court will be able to find that there was never an oral modification of the promissory note or mortgage relieving the Cohens of the obligation to make monthly payments. Since the lack of payments in May and June 2007 is undisputed, the Court should find that the Cohens were in default under the terms of the promissory note and that the entire balance is now due.

#### **4. *In Rem* Action Against the Vessel**

The preferred ship mortgage provides Del Mar with extensive rights in the event of a default. Under the mortgage in the event of an act of default Del Mar is entitled to: a) declare the principal of the note and all accrued interest immediately due and payable; b) retake the vessel with or “without legal process” at any time wherever it is found, and without being responsible for loss or damage; and c) sell the vessel in a public or private sale.

Del Mar’s decision to arrest the vessel in June, 2007 was consistent with its rights under the mortgage. Although Del Mar could have retaken the vessel without judicial process, Del Mar chose instead to proceed with an action to arrest the vessel through this Court and then only after receiving information that raised legitimate concerns about the Cohens’ ability to repay the large debt that they had accumulated to Del Mar. In the months immediately before the arrest Del Mar received news that:

- Barry Cohen was sick and unemployed and “trying” to make payments;
- Barry Cohen was potentially responsible for over two million dollars in attorneys fees in other litigation that he was pursuing and that, by his own admission, he “may be forced out of business totally and into bankruptcy” if the trial Court in that case did not award him his fees;
- On March 16, 2007 the Superior Court hearing the motion for attorneys fees and costs in the Cohen’s litigation against the Port San Luis Harbor District ruled that neither party was entitled to receive its attorneys’ fees;
- Barry and Chris Cohen were going through a divorce that would likely be “messy.”
- The Cohens despite making a few payments, started to again miss payments in

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-138-4600  
FAX 415-138-4601

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1 March, May and June, 2007.

2 Del Mar's decision to proceed with an *in rem* action against the vessel was taken to  
 3 secure the asset which was in default under the terms of the Note and Mortgage. On June 7,  
 4 2007, the verified complaint was filed alleging that the Cohens were in default as of May 1,  
 5 2007. The vessel was subsequently arrested by the U.S. Marshal who turned custody over to  
 6 the court-appointed substitute custodian, National Maritime Services ("NMS"). On or about  
 7 June 21, 2007, NMS moved the Vessel to Point Richmond and turned custody over to Sugar  
 8 Dock, LLC. The vessel was released from arrest on August 17, 2007. It was therefore under  
 9 arrest for a total of 70 days.

#### 10 **5. Counterclaim by the Cohens**

11 The Cohens have counterclaimed against Del Mar alleging the wrongful arrest of the  
 12 vessel, and intentional and/or negligent interference with prospective economic advantage.  
 13 As noted above, the evidence shows that Del Mar had several legitimate bases for concern  
 14 regarding the financial ability of the Cohens to meet their monthly payment obligations. Del  
 15 Mar also acted on the advice of experienced maritime counsel in proceeding with the arrest.  
 16 In addition, the Court should note that the parties had agreed that Del Mar could retake the  
 17 vessel without legal process in the case of a default. The fact that Del Mar chose to proceed  
 18 through the Courts instead of resorting to a self-help remedy is itself evidence that Del Mar  
 19 was not acting in "bad faith" or with malice or gross-negligence.

### 20 **III. LIABILITY ANALYSIS**

#### 21 **A. Del Mar's Action for Breach of Promissory Note and Preferred Mortgage:**

22 Del Mar has the initial burden of proof to establish the facts of the promissory note  
 23 and mortgage, the payment terms and balance, and the act or acts of default by the Cohens. If  
 24 Del Mar meets this burden of proof, then Del Mar should receive a verdict in its favor on its  
 25 action for breach of the promissory note and mortgage, and the Court should foreclose the  
 26 mortgage against the vessel. If the Cohens are not able to immediately pay the judgment, the  
 27 Court should order the re-arrest of the F/V POINT LOMA and its sale to satisfy the  
 28 promissory note and mortgage.

COX, WOOTTON,  
GRIFFIN, HANSEN  
& POULOS LLP

190 THE EMBARCADERO  
SAN FRANCISCO, CA  
94105  
TEL 415-438-4600  
FAX 415-438-4601

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1 Normal California rules of contract interpretation apply. As set forth above and in the  
 2 trial exhibits, the terms of the Promissory Note and Preferred Mortgage are clear and  
 3 unequivocal. They require monthly payments of \$3,000 or 15% of the gross landing receipts  
 4 for the vessel. They also allow additional debts to be added to the balance. Interest accrues  
 5 at 7.0% per annum. The evidence at trial will establish that the Cohens agreed to add  
 6 additional sums to their balance and then repeatedly failed to meet their payment obligations.

7 As of the date of the vessel's arrest, the Cohens owed a balance of \$100,023.50 in  
 8 principal plus interest of \$45,259.66 for a total balance due under the note of \$145,283.16.  
 9 The Court should find that the Cohens are in default for non-payment of the debt and should  
 10 foreclose on the Preferred Mortgage.

11 The Cohens' allege in defense that they entered into an oral modification of the  
 12 contract terms requiring monthly payments. Written contracts can be modified by an oral  
 13 agreement that is either "executed" or supported by new consideration. Cal. Civ. Code §  
 14 1698. The problem with the Cohens' argument is that for either of these conditions to occur  
 15 there must first be an *oral modification*. Here, again, the Cohens have not provided any  
 16 evidence that a particular conversation took place at a particular time by which the parties  
 17 reached a meeting of the minds to modify the contract terms. The "whole conversation"  
 18 Cohen had with Joe Cappuccio simply does not establish an agreement in the first instance.  
 19 As a result, C.C.P. §§1698 (b) and (c) do not apply.

20 Defendants also argue that because Del Mar never sent any notice to Defendants that  
 21 they were late on any payments, the contract was somehow altered. This argument is  
 22 contrary to the provisions of C.C.P. §1698 which sets forth the limited ways in which a  
 23 written contract may be modified. Silence is not one of the allowed ways. Moreover, the  
 24 promissory note expressly provides that "Maker hereby waives (a) presentment, demand,  
 25 protest, notice of dishonor and/or protest, and notice of non-payment." TE 7, ¶ 6 ("Waiver of  
 26 Rights by Maker"). Plaintiff has never been required to notify defendants that a payment was  
 27 past due. The Cohens have not even suggested that this term was ever discussed or "orally  
 28 modified."

COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS LLP

190 THE EMBARCADERO  
 SAN FRANCISCO, CA  
 94105  
 TEL 415-138-1600  
 FAX 415-138-1601

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1 The Cohens' contention that the written contract was orally modified to allow the  
 2 lump sum pre-payment is also contradicted by both Barry Cohen's conduct and his  
 3 subsequent writings. The Cohens give no explanation for why payments were made in  
 4 January, February and April 2007 if, as they contend, no payments were actually due. They  
 5 also fail to explain why Barry Cohen said in his note to Del Mar dated January 30, 2007 that  
 6 he would try to make the continuing monthly payments.

7 Finally, Del Mar's position on the proper application of the \$175,000 payment is also  
 8 supported by California Civil Code Section 1479 which provides that unless the debtor  
 9 (Cohen) manifests his intention or desire as to how his payments are to be applied to his  
 10 debts, the creditor (Del Mar) "may apply it toward the extinction of *any obligation,*  
 11 *performance of which was due to him from the debtor at the time of such performance . . .*"  
 12 (emphasis added). Unless the Cohens present new evidence that they directed Del Mar how  
 13 to apply the payments, then Del Mar was entitled to apply them in any way it chose  
 14 consistent with the promissory note which, in this case, was to accrued interest and principal  
 15 leaving the balance due with all monthly payment obligations still in force.

16 B. Cross-Complaint for Wrongful Arrest:

17 The Cohens have admitted that Del Mar has a valid maritime lien against the vessel,  
 18 and the sole issue on the arrest of the vessel is therefore whether there was an act of default  
 19 giving rise to the right to foreclose. If there was, then the Cohens' action for wrongful arrest  
 20 fails in its entirety.

21 The federal maritime law provides that the arrest must be allowed if there is  
 22 "probable cause" to arrest with vessel. Courts throughout the country, including in the Ninth  
 23 Circuit, have held that this burden is met by showing that the claimant has a valid maritime  
 24 lien. *Greger Leasing Corp. v. Barge PT. Portrero*, 2006 U.S. Dist. LEXIS 18863, \*4 (N.D.  
 25 Cal. 2006) (holding that "Plaintiff bears the burden of showing that 'probable cause' existed  
 26 to arrest the vessel, which 'translates roughly to requiring that plaintiff show entitlement to a  
 27 maritime lien,'""); *Newport News Shipbldg. and Dry Dock Co. v. S.S. Independence*, 872  
 28 F.Supp. 262, 265 (E.D. Va. 1994). The post arrest hearing "is not intended to resolve

COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS LLP

190 THE EMBARCADERO  
 SAN FRANCISCO, CA  
 94105  
 TEL 415-438-4600  
 FAX 415-438-4601

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1 definitively the dispute between the parties, but only to make a preliminary determination  
 2 whether there were reasonable grounds for issuing the arrest warrant.” Quoting *Lion De Mer*  
 3 *S.A. v. M/V Loretta Dm* 1998 U.S. Dist. LEXIS 10182, No. Civ. L-98-921, 1998 WL 307077  
 4 at \*2 (D. Md. Apr. 3, 1998).

5 Del Mar recognizes that the trial court initially ordered the release of the vessel from  
 6 arrest due to the failure of Del Mar to disclose the payment of \$175,000 in its initial  
 7 pleadings and because there were allegations made by the Cohens that there was an  
 8 agreement by the parties to apply the \$175,000 toward future monthly payment obligations  
 9 such that the Cohens were not in default. These issues were sufficient for the Court to issue  
 10 an order on August 16, 2007 vacating the arrest of the vessel. That order, however, also  
 11 specifically states that: “This order is without prejudice to plaintiff proving its case at trial or  
 12 on summary judgment.” In a subsequent order denying a motion for stay, the Court further  
 13 held that the August 16 order vacating the arrest based on a lack of probable cause “was not a  
 14 conclusive factual finding. Plaintiff’s arguments may very well carry the day upon final  
 15 resolution of his action.” Del Mar is confident that after hearing all of the evidence, the Court  
 16 will find that there was no agreement to apply the \$175,000 payment toward future monthly  
 17 payment obligations and that the Cohens were therefore in default. This evidence will  
 18 support a finding that there was in fact probable cause for the arrest.

19 Even if the Court concludes after trial that there was not probable cause for the arrest,  
 20 the Cohens have the burden of proof to establish that in arresting the vessel Del Mar acted  
 21 with bad faith, malice or gross-negligence. *Frontera Fruit Co. v. Dowling*, 91 F.2d 293, 297  
 22 (5<sup>th</sup> Cir. 1937). The evidence at trial will not support a finding of bad faith, malice or gross-  
 23 negligence on the part of Del Mar.

24 The Court has already received briefing in the summary judgment motion on the  
 25 causes of action for interference with prospective economic advantage. Again, the evidence  
 26 will not be re-summarized here as the Court is well familiar with it. Suffice it to say that Del  
 27 Mar believes that the evidence at trial will establish that Del Mar did not know of nor intend  
 28 to interfere with any of the Cohens’ contracts (if any) with third parties nor did it believe that

COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS LLP

190 THE EMBARCADERO  
 SAN FRANCISCO, CA  
 94105  
 TEL 415-438-4600  
 FAX 415-438-4601

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1 such interference was substantially likely to occur. The evidence at trial will show that Del  
 2 Mar believed that the Cohens would take the typical approach of putting up a bond or  
 3 undertaking to release the vessel and thereby provide security for Del Mar's claims.

#### 4 **IV. DAMAGES**

5 Del Mar's damages are the amount due under the promissory note and mortgage  
 6 including all accrued interest. This amount as of trial is \$180,563.47. In addition, Del Mar is  
 7 entitled to recover the *custodial legis* costs incurred while the vessel was under arrest. These  
 8 costs are \$15,125.22. The promissory note and mortgage also provide for recovery of  
 9 attorneys fees. The normal practice is for the attorneys' fees to be subject to a post trial  
 10 prove-up by the prevailing party, and Del Mar understands that this issue will be addressed at  
 11 the pre-trial conference.

12 Based on the above, Del Mar will ask the Court for a judgment in its favor of  
 13 \$195,688.69 together with attorneys' fees and costs.

14 The Cohens' cross-complaint alleges that the Cohens and the F/V POINT LOMA  
 15 Fishing Company sustained lost income as a result of the vessel's arrest. The evidence at  
 16 trial will establish that when all of the costs of operation are included (insurance, dockage,  
 17 maintenance, crew expenses, fuel, ice, license fees, etc) the Cohens claims for lost profits are  
 18 entirely speculative. The facts are that they were losing money on the operation of the Point  
 19 Loma (or so they claimed on their taxes), or alternatively that the profits were very small. In  
 20 a "best case" scenario based on historical fishing records for the vessel, the Cohens lost  
 21 approximately \$9,000 during the time that the vessel was under arrest.

#### 22 **III. CONCLUSION**

23 The Cohens owe Del Mar a substantial sum of money. At the very least they owe by  
 24 their own admission \$27,000 and by an earlier admission over \$130,000, exclusive of  
 25 interest. The Court has properly noted that the outcome of the case will depend in large  
 26 measure on the treatment given to the one time payment of \$175,000. If, as Mr. Cohen  
 27 admits and Del Mar agrees, the payment was made to "pay down that note by that much"  
 28 then the Cohens were not relieved of their obligation to make monthly payments, and they

1 should be found to be in default. Such a holding resolves both the complaint and the cross-  
 2 complaint for wrongful arrest.

3 Only if the Court finds that there was an oral agreement to modify the payment terms  
 4 should the Court entertain the cross-complaint for wrongful arrest. Del Mar contends that  
 5 there is no evidence of an oral agreement to modify the payment terms. In addition, even if  
 6 the Court reaches the issue of wrongful arrest, the evidence at trial will establish that Del Mar  
 7 did not act with malice, bad faith or gross-negligence in seeking to foreclose its maritime lien  
 8 against the F/V POINT LOMA.

9 Judgment should be entered in favor of Del Mar and against Barry and Christine  
 10 Cohen, the F/V POINT LOMA and the F/V POINT LOMA FISHING COMPANY, INC.

11  
 12 Dated: April 28, 2008

COX, WOOTTON, GRIFFIN,  
 HANSEN & POULOS, LLP  
 Attorneys for Plaintiff  
 DEL MAR SEAFOODS, INC.

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 17 By: /s/  
 18 Gregory W. Poulos

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 26 COX, WOOTTON,  
 GRIFFIN, HANSEN  
 & POULOS LLP  
 27 190 THE EMBARCADERO  
 SAN FRANCISCO, CA  
 94103  
 TEL 415-438-1600  
 FAX 415-438-1601  
 28

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